

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 58 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BHOPAJI @ BHOPO SWARUPJI THAKOE

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

#. Heard Mr.H.R.Prajapati, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 7-7-1999 passed by

respondent No. 2 - The District Magistrate, Banaskantha against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicate that the petitioner is alleged to have been involved in six criminal cases registered at Bhiladi Police Station in between 6-4-1998 to 27-10-1998 for the offences made punishable under Section 379 of IPC. That all six cases have been pending for further investigation and on the basis of the said material of all said cases and particularly, the statement in confessional nature of the petitioner, the respondent No : 2 as the detaining authority has come to the conclusion that the petitioner is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order suffers the vice of unexplained delay in taking action despite having information of registered cases on 27-10-1998.

#. That in the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported vide AIR 1994, S.C. 656 having followed the earlier decision, the Hon'ble Supreme Court has held that if the delay in taking the impugned action from the last date of anti social activities of the detenu, is not satisfactorily explained, the order is vitiated and cannot be sustained. That the same proposition has been reiterated by this Court in the matter of ELES H PATEL VS COMMISSIONER OF POLICE, AHMEDABAD reported vide 1997 (1) GLH 381 after considering the various authorities of the Supreme Court.

#. In the instant case, grounds of detention, if perused is devoid of any explanation as to why, no immediate action, if necessary was taken since the last date of registration of the case on 27-10-98. That the petitioner appears to have been arrested on 3-5-1999 and

thereafter, the statement of the petitioner in the form of confessional has been recorded on 25-4-1999 and 2-5-1999. That the petitioner was released on bail on 10-5-1999 and yet the detention order appears to have been passed on 7-7-1999. That in absence of any explanation much less in the grounds of detention, it is difficult to sustain the order. That despite due service of rule, none of the respondents has filed any affidavit to controvert the averments made in the petition. Under the circumstances, I am constrained to hold that the impugned order being a delayed action without any satisfactory explanation, appears to have been taken after inordinate delay from the date of receipt of material and necessary information and as such, is bad in law.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 7-7-1999 passed by respondent No. 1 - The District Magistrate, Banaskantha against the petitioner is hereby quashed and set aside. The petitioner - Shri Bhopaji @ Bhopo Swarupji Thakore is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 29-2-2000 (A.K.Trivedi, J.)

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